



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved	Orders Pronounced
17.12.2019	28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No. 3799 of 2016

and

W.M.P. (md) No.3415 of 2016

A.Anbalagan

... Petitioner

Vs.

The Secretary to Government
Municipal Administration & Water
Supply (TP.4) Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in G.O.(D) No.695 issued by the Municipal Administration & Water Supply (TP.4) Department, dated 30.11.2015 quash the same and consequently direct the respondents herein to reinstate the petitioner with arrears of salary from the date of impugned order till reinstatement with interest thereon, promotion and all other monetary and attendant benefits.

For Petitioner

: Mr.C.Jeganathan for
M/s.Veera Associates

For Respondent

: Mr.K.Chellapandian
Addl. Advocate General

Assisted by Mr.AayiramK.Selvakumar, A.G.P.

ORDER

Petitioner joined Municipal Service as a Physical Education Teacher in the Municipal School, Sivakasi on 26.2.1997 through employment office. During the year 2001, the petitioner was posted as a Physical Education Teacher at Government High School, Poothipuram, Theni District.

2. According to the petitioner, a case had been registered by the Directorate of Vigilance & Anti Corruption Department in Crime No.3 of 2004 under Sec.7 of the Prevention of Corruption Act alleging that there was a demand of illegal gratification by the Executive Officer and 2 others. But the petitioner was not arrayed as an accused in the aforesaid case. The said criminal case registered against the petitioner was referred to the Tamil Nadu Disciplinary Proceedings Tribunal, Madurai for framing charges and also to initiate disciplinary proceedings since the Executive Officer -1 is a Government servant and the competent



authority for taking further decision is only the Government.

(i) The petitioner was served with charge memo in proceedings in Roc.No.A1/2062/2009 (TDP No.17/2009) on 31.12.2009 by the Disciplinary Proceedings Tribunal, Madurai that while he was working as Physical Education Teacher of Government High School, accepted a sum of Rs.200/- from one Kalaiselvan between 17.3.2004 and 18.3.2004 as illegal gratification for recommending drinking water connection to the house of V.Kalaiselvan through his wife who is a Ward member of Palanichettipatti Town Panchayat.

(ii) The Tribunal after framing the charges have examined only four witnesses viz., the defacto complainant one Kalaiselvan who gave complaint and 2nd witness is a stock witness who is said to have accompanied P.W.1 and third and fourth witness are police officers who had not deposed about either demand or performance of trap. P.W.1 turned hostile, P.Ws.2 and 4 have not made any specific allegation to support the charge that the petitioner have accepted a sum of Rs.200/- and cash was also not recovered from the petitioner.

(iii) The Enquiry officer after examining oral and documentary evidence, held the charges as proved. The Government proposed to impose punishment of compulsory retirement and sought for views of Tamil Nadu Public Service Commission. The T.N.P.S.C. in its opinion concurred with the view of imposing punishment of compulsory retirement.

(iv) Though the petitioner was served with the notice by the first respondent on 10.3.2014 about the finality of charges by the Tribunal, there is no notice of the proposed punishment of compulsory retirement nor there is a finding that the Government has accepted the findings of the Enquiry Officer.

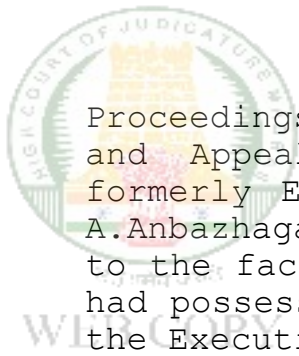
(v) As there is no appeal remedy against the impugned order, the petitioner left with no other remedy, has filed the instant writ petition before this Court for the aforesaid relief.

3. The respondent filed counter affidavit wherein it is stated that during his tenure as Junior Assistant in Palanichettipatti Town Panchayat, Theni District, the petitioner Rajesh Ayyanar Murugan was trapped and arrested by the Director of Vigilance and Anti Corruption, Theni district in Cr.No.3 of 2004 under Section 7 of the Prevention of Corruption Act, 1988 along with Executive officer for the demand of illegal gratification for providing house service connection.

(i) The petitioner was suspended from service vide Proceedings of the Theni District Collector in Roc.No.30813/2004-2/TP2, dated 19.3.2004. Based on the judgment in W.M.P.No.9233 of 2005 in W.P.No.8536 of 2005 filed by the petitioner, the suspension was revoked and the petitioner was reinstated into service as Junior Assistant in Pudupatti Special Village Panchayat.

(ii) Further, since a criminal case was investigated by the Director of Vigilance and Anti Corruption Department, the Government

<https://hcservices.ecms.gov.in/hcservices/>



Proceedings, Madurai under the Tamil Nadu Civil Services (Discipline and Appeal) rules for inquiry against Thiru A.Senrayaperumal, formerly Executive Officer, Rajesh Ayyanar Murugan, and one Thiru A.Anbazhagan, Teacher in Government High School, Poothipuram owing to the fact that there is a prima facie that Rajesh Ayyanar Murugan had possessed a sum of Rs.4300/- at the time of trap and arrest of the Executive Officer who is A-1 in the criminal case.

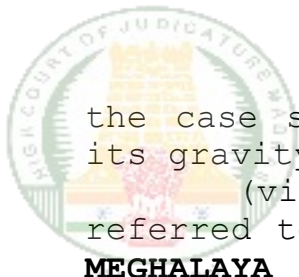
(iii) Thereafter, in compliance of the orders of the Government, the Tribunal for Disciplinary Proceedings, Madurai framed three charges against the petitioner and 2 others in connection with cash of Rs.4300/- seized during the Vigilance raid as unaccounted money and the same is violation of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules for non maintenance of absolute integrity while performing his duty, vide Disciplinary Proceedings charge Memo Roc.No.A1/262/2009 (Tribunal for Disciplinary Proceedings 17/2009) dated 31.12.2009.

(iv) Before the Tribunal, four witnesses including defacto complainant were examined and documents were marked. The enquiry officer recorded a finding that the charge made against the petitioner is proved and sent inquiry report to the Secretary to Government, Municipal Administration and Water Supply Department on 15.7.2013 and the same was communicated to the petitioner vide letter Roc.No.19975/TP4/2013-5, dated 10.3.2014 for offering further explanation on the enquiry report. The enquiry report was served to the petitioner on 29.3.2014.

(v) The petitioner submitted his further explanation on 3.4.2014. Based on the defence statement of the petitioner as well as the findings of the Tribunal for Disciplinary Proceedings, the Government proposed to impose a punishment of compulsory retirement to the petitioner and sought for views from Tamil Nadu Public Service Commission under Rule 18(1) (b) (ii) of the Tamil Nadu Public Service Commission Regulations, 1954. The Tamil Nadu Public Service Commission has also concurred with the punishment proposed by the Government and accordingly, the Government have passed orders inflicting the punishment of compulsory retirement vide the impugned G.O.(D) No.694, Municipal Administration and Water Supply (TP4) Department, dated 30.11.2015 after in depth examination and also taking into account the views of the T.N.P.S.C.

(vi) The charge against the petitioner is grave and serious in nature, the punishment of compulsory retirement was imposed against the petitioner vide impugned order, dated 30.11.2015 after carefully analyzing the prima facie case against the petitioner.

(vii) Further, it is stated that the Hon'ble Apex Court vide its judgment rendered in **DELHI POLICE THROUGH COMMISSIONER OF POLICE AND OTHERS VS. SAT NARAYAN KAUSHIK (2016 (6) SCC 303)** the Hon'ble Supreme Court has held in paragraph 15, 'we are of the view that the High court in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of



the case such as nature of charges levelled against the employee, its gravity, etc.

(viii) Further, in the counter affidavit, the respondent referred to the judgment of the Apex Court in the case of **STATE OF MEGHALAYA AND OTHERS VS. MECKEN SINGH N.MARAK [2008 (7) SCC 580]** wherein it is held as follows:

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons, the High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary Authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. The mere statement that it is disproportionate would not suffice."

(ix) In support of their contention, the respondent also relied on the judgment reported in **2016(1) CWC 721**, wherein High Court in paragraph 18 held that, 'keeping in mind the principles to be followed in the matter of interference with the penalty and while considering the facts and circumstances of this case, where a teacher has made a false claim of Travelling Allowance/ Dearness Allowance and found to have indulged in misconduct, this Court is not inclined to interfere with the penalty. Therefore, the respondent has rightly passed the order of punishment of compulsory retirement vide G.O.(D) No.694, Municipal Administration and Water Supply (TP.4) Department, dated 30.11.2015.

Grounds raised by the petitioner:

4. Challenging the impugned order passed by the respondent, dated 30.11.2015, the learned counsel appearing for the petitioner raised the following grounds:

P.W.1 who is alleged to have given a complaint about the illegal demand and gratification turned hostile. There is no evidence to the effect that the petitioner received a sum of Rs.200/- from the complainant. Further, the impugned order of punishment is affecting the service rights of the petitioner and the punishment imposed is a major one and when there is no iota of evidence either oral or documentary, the punishment of compulsory retirement is disproportionate. Hence, the impugned order is liable



to be set aside.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondent and perused the materials available on record.

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6. The charge against the petitioner is that he accepted a sum of Rs.200/- from the complainant as illegal gratification for recommending drinking water connection through his wife who was a ward member. P.W.4, Inspector of Police, Vigilance and Anti Corruption department in his chief examination has stated that Accused Officer-3 Anbalagan was working as Clerk in the said office but, during his cross examination admitted that the petitioner Anbalagan was not working in Palanichettipatti Town Panchayat at the time of occurrence. A perusal of the enquiry report shows that the enquiry officer without proper application of mind mechanically submitted his report by stating that the charges framed against the petitioner is proved. Further, when the allegation of bribe against the petitioner had taken place on 17.3.2004, charges have been framed against the petitioner after five years i.e. on 31.12.2009 and the enquiry officer also, after conducting enquiry, submitted a report belatedly on 15.7.2013. Again, after more than two years, the impugned order of punishment had been passed by the respondent on 30.11.2015. There is no acceptable explanation on the side of the respondent for the delay of five long years in initiating disciplinary proceedings. Therefore, there is an inordinate delay of more than 10 years in conducting an enquiry especially in a Vigilance case and passing the final order of punishment which cannot be accepted by the Court of law except under special circumstance.

7. Following the aforesaid judgment, the Hon'ble Supreme Court in **RANJEET SINGH VS. STATE OF HARYANA & OTHERS [2008 (3) CTC 781]** held as under:

''9. We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry,



no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits.''

8. Following the decision of the Hon'ble Supreme Court in **P.V. Mahadevan case (supra)**, this Court in **C. VIJAYAKUMAR VS. THE STATE OF TAMIL NADU AND ORS. [(2017)1 MLJ 327]** held as under:

''13. Considering the factual aspects of the case, I am of the opinion that as contended by the learned senior counsel for the petitioner, had the charge-memo been issued at an earlier point of time, by this time the punishment imposed on the petitioner would have come to an end. In view of the delay in issuing the charge-memo, the petitioner's chance for getting promotion has got further delayed. Therefore, for the inaction on the part of the respondents, the petitioner cannot be made to suffer. In this regard, a reference could be placed in the judgment reported in (2006) 3 MLJ 621 [M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd., wherein it has been held by this Court, by following the decision of the Hon'ble Supreme Court in the case of P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board [MANU/SC/0483/2005 : 2005(4) CTC 403], as follows

"16. Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in initiating proceedings and also during the conducting of the proceedings the petitioner shall not be made to suffer any further."

In P.V. Mahadevan VS. M.D., Tamil Nadu Housing Board [MANU/SC/0483/2005 : 2005(4) CTC 403], the Hon'ble Supreme Court has held as follows:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government Official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only



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in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

The dictum laid down in the above cited decisions would be squarely applicable to the present facts of the case. Even in the instant case also, the petitioner has suffered enough by the protracted disciplinary proceedings. Now, he cannot be made to suffer further, especially when there is no proper explanation for the inordinate delay in issuing the charge-memo. Hence, on this sole ground of inordinate delay in initiating the disciplinary proceedings, the present writ petition deserves to be allowed.''

In the case on hand also, the petitioner has suffered enough by the protracted disciplinary proceedings. Therefore, this Court is of the view that the facts of the case on hand squarely covered by the proposition laid down in the aforesaid decisions.

9. Considering the facts and circumstances of the case and the decisions cited supra, the impugned punishment order imposed against the petitioner is unsustainable in law and the same is liable to be quashed. Accordingly, the impugned order passed by the respondent, dated 30.11.2015 is quashed. The writ petitioner is entitled for 25% of the backwages for the non working period and also entitled for other attendant benefits as per the rules.

10. The writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



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To

The Secretary to Government
Municipal Administration & Water Supply (TP.4) Department,
Government of Tamil Nadu, Fort St. George, Chennai-9.

+1 CC to M/s.VEERA ASSOCIATES, Advocate

Pre-Delivery order made in
W.P(MD) No. 3799 of 2016
and W.M.P.(md) No. 3415 of 2016
Dated: 28.02.2020

SMA/08/05/2020/8P/3C